

The President listened to ideas of Senators on both sides of the aisle about the type of person and individual he should nominate to the Supreme Court.

Ultimately, though, the Constitution provides the authority to choose to the President and the President alone. The Constitution does not contemplate the Senate being cochoosers of the nominee but, rather, the President making that choice and then the Senate providing advice and consent during this judicial confirmation process, ultimately leading up to an up-or-down vote on the Senate floor.

I am a little disappointed that in spite of this attempt to reach out more than halfway to the Senate, and particularly the minority in the Senate on consultation, the President's good efforts have been rejected as inadequate. But I don't see how any reasonable outside observer could reach that conclusion.

Second, the issue of questions. What kind of questions should a nominee answer? The standard for this was set in the early 1990s by Ruth Bader Ginsburg who was nominated by President Clinton and confirmed to the U.S. Supreme Court. While she was willing to talk about things she had written in the past, it was clear that she was going to draw a very important line in terms of sending signals or prejudging cases or issues that were likely to come back before the Court. It was using that same standard observed by not only Judge Ginsburg but Judge Breyer, who was confirmed after her—also a Clinton nominee—Thurgood Marshall, Sandra Day O'Connor, or William Rehnquist in his confirmation proceeding.

It is clear, as Judge Roberts said, that there is an ethical line that judges cannot cross, one of which is set by the American Bar Association Model Code on Judicial Ethics. It says clearly, in confirmation proceedings—I asked Judge Roberts during the Senate Judiciary Committee hearings—that applies to judicial confirmation hearings. So it would have been unethical to cross the line. And now some Senators insist Judge Roberts should have crossed the line when it came to answering certain types of questions that would ask him to prejudge certain issues and cases.

But there is also a constitutional standard because the independence of the judiciary is a core value of our form of government and of the American people. Who could feel that a judge was truly independent and fair who has already stated in a confirmation hearing how he would rule on an issue that later comes before the Supreme Court? Everyone recognizes that is not fair, that is not an independent judiciary. So I believe the judge drew an appropriate line from that standpoint as well.

Finally, there is the third prong of this three-prong attack laid out by the special interest groups long before Judge Roberts was even nominated and has to do with the documents issue.

This has to do with documents prepared by the Solicitor General's Office as it prepared to represent the United States in the Supreme Court.

I asked Judge Roberts whether that sort of ability to have candid and confidential communications among the lawyers who are representing the United States was part of a recognized privilege that all lawyers and clients share, whether it is the Government or whether it is individuals, and he said it was.

In fact, a number of Senators on our Judiciary Committee were quite upset last year when it appears confidential documents written by their committee lawyer to those Senators were then published in the outside world, claiming their rights had been violated. If the Senators are entitled to have confidential communication from our own lawyers and our own staff without having it published in the outside world, then surely the President of the United States enjoys that same right and privilege.

This nominee has withstood in admirable form more than 20 hours of questions from members of the Senate Judiciary Committee. There were 32 witnesses who testified after he did, including the American Bar Association which has given him an A plus, so to speak, that considered him unanimously to be well qualified for this position. In the end, though, this nominee is probably better known to the Senate and the Senate Judiciary Committee than any nominee in recent history, having only 2 years ago been confirmed by unanimous consent to the District of Columbia Court of Appeals, what some have called the second highest court in the land.

I ask my colleagues who are bound and determined to vote against this nominee who, by most accounts, is one of the most impressive nominees and outstanding nominees who has ever been nominated to the Supreme Court, is there any nominee of this President for whom they could vote? I fear the answer to that is no, that for some of our colleagues, there is no nominee by this President to the U.S. Supreme Court for whom they could ever vote.

That should sadden and disappoint all of us because what it means is that the bitter partisan divisions that separate us in this body far too often and distract us from the important work we have been sent here by our constituents to do have triumphed over the constitutional obligation to provide advice and consent and to conduct our ourselves with civility and dignity and to resist the pressures of interest groups who cry out for the political scalp of not just this President but all of his nominees and discourage good men and women from being willing to answer the call to public service. If they know they are getting ready to be put through a sausage grinder, if they know everything they did and said would be examined and distorted even and in the end that the merit of their

nomination would play second fiddle to bitter partisan politics, I fear there are good men and women who would like to answer the call to public service who will simply say no.

I am looking forward on Thursday to the Senate Judiciary Committee voting Judge Roberts out of the committee and his nomination coming to the floor. I hope our colleagues will study his background, the record created before the Judiciary Committee, and come to their own decision, without regard to politics, without regard to partisanship, and judge it solely on the merits. But particularly it is my earnest hope and plea they resist the cry of the outside special interest groups who care nothing about good government but only about their narrow special interests and are using these nominations, more than anything, to raise money by scaring people and by distorting the qualifications and credentials of good men and women such as John Roberts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

#### ORDER OF PROCEDURE

Mr. BENNETT. Mr. President, I understand that under the order, we now go to the Agriculture appropriations bill. I have a few housekeeping details I would like to take care of on behalf of the leader, and then I ask unanimous consent that the senior Senator from Massachusetts be granted half an hour in which he may speak in morning business, with the understanding that we will then go back to the Agriculture appropriations bill without any other requests for morning business being honored.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. I thank the Chair.

#### RECOGNIZING THE LIFE AND ACCOMPLISHMENTS OF SIMON WIESENTHAL

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 245 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The journal clerk read as follows:

A resolution (S. Res. 245) recognizing the life and accomplishments of Simon Wiesenthal.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. FEINSTEIN. Mr. President, I rise today to pay tribute to a man who dedicated himself to preserving the memory of the millions who perished in the Holocaust and to promoting human rights and preventing genocide.

Simon Wiesenthal lived through unimaginable tragedy and horror as a prisoner in Nazi concentration camps